

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICORECEIVED & FILED
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CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.J. CASTRO DISTRIBUTOR, INC.,
Plaintiff,

v.

OPTIMA BATTERIES, INC., ET AL.,
Defendants.*
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CIVIL NO. 98-1721(PG)

OPINION & ORDER

Plaintiff filed this action under Puerto Rico Law 75, 10 LPRA §278 et. seq., and Article 1802 of the Puerto Rico Civil Code, as a result of the alleged illicit termination of its exclusive dealer's relationship with Optima Batteries. In support of its allegations regarding damages, Plaintiff relies upon the testimony of Edileen Salicrup, CPA. The issue before the Court arose per defendant's efforts to exclude plaintiff's expert witness from testifying as to damages. In its motion *In Limine* Defendant argues that Salicrup's proposed testimony should be excluded because (i) it ignores the statutory measure of damages set forth in Law 75; (ii) it is inherently speculative and unreliable and (iii) the reasoning behind the conclusions bears no rational connection to the information upon which her opinions are based.

A. Law 75 and its damages provision

Art. 3 of Act 75 specifically provides that the amount of indemnity that a plaintiff can obtain is to be fixed on the basis of four factors. These factors are:

(A) the actual value of the amount expended by the dealer in the acquisition and fitting of premises, equipment, installations, furniture and utensils, to the extent that these are not easily and reasonably useful to any other activity in which the dealer is normally engaged

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(B) the cost of the goods, parts, pieces, accessories and utensils that the dealer may have in stock, and whose sale or exploitation he is unable to benefit.

(C) the good will of the business. . .

(D) the amount of the profit obtained in the distribution of the merchandise or in the rendering of the services, as the case may be, during the last five years, or if less than five, five times the average of the annual profit obtained during the last years, whatever they may be.

10 L.P.R.A. § 278b. Defendants' argue that plaintiff's expert testimony should be restricted per the statutory damage calculation provided by the statute.

Plaintiff reply centers around the fact that the Law 75 damage factors are to be flexibly applied. Although the law specifically identifies four factors that a court should consider when fixing Law 75 damages, the Supreme Court of Puerto Rico has held that:

[The factors] are only guidelines for the fixing of the damages and do not bind the court to automatically award indemnity applying each and every factor. The court has discretion to apply the factors listed in the light of the specific circumstances of each case, pursuant to the evidence presented.

Mariana Industrial v. Brown Boveri Corp., 114 D.P.R. 64, 90 (1983).

Simply put, plaintiff would have this Court ignore the four statutory factors and allow his expert witness to base her testimony on other elements not identified by the law. Although the courts of this District have faithfully applied *Marina Industrial*, "it is one thing to say that the section 278b's list of remedies is not exclusive; it is quite another to assert that a Court may fashion a new procedure to calculate a remedy when the law already specifically provides a mechanism for doing so." *Telenetworks, Inc. v. Motorola Universal Systems*, 906 F.Supp. 75 (D.P.R. 1995). The undersigned holds today as it did before that "the text of section 278b(d) scrupulously describes the method to

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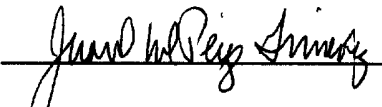
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determine lost profits. Absent compelling circumstances, I see no reason to judicially amend it.”

Wherefore, Plaintiff's expert witness will be allowed to testify only within the scope provided by the damages provisions of Law 75. Anything outside the statutory scope is inapplicable to a proper calculation of damages under the law. Defendants' other arguments are now moot.

IT IS SO ORDERED.

San Juan, Puerto Rico March 28, 2001.


JUAN M. PEREZ-GIMENEZ

U.S. District Judge